REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1, 2, 7, and 10-35 are pending in the present application, and Claims 26 and 29 have been amended. The amendments to Claims 26 and 29 correct antecedent basis informalities and do not add new matter.

In the outstanding Office Action, Claims 26-31 and 35 were objected to; Claims 1, 10-12, 14-17, 21-27, 29, and 30 were rejected under 35 U.S.C. §103(a) as unpatentable over Pugaczewski et al. (U.S. Patent No. 6,069,873, hereinafter Pugaczewski) in view of Carolan et al. (U.S. Patent No. 6,753,887, hereinafter Carolan); Claims 2, 19, 20, 28, and 33-5 were rejected under 35 U.S.C. §103(a) as unpatentable over Pugaczewski in view of Carolan, and further in view of Bahadiroglu (U.S. Patent Publication No. 2002/0186660); Claims 7, 13, and 31 were rejected under 35 U.S.C. §103(a) as unpatentable over Pugaczewski in view of Carolan, and further in view of Wei et al. (U.S. Patent No. 6,515,967, hereinafter Wei); Claim 18 was rejected under 35 U.S.C. §103(a) as unpatentable over Pugaczewski in view of Carolan, and further in view of Thomas et al. (U.S. Patent No. 6,847,395, hereinafter Thomas); and Claim 32 was rejected under 35 U.S.C. §103(a) as unpatentable over Pugaczewski in view of Carolan, and further in view of Farra (U.S. Patent No. 6,408,070).

Applicants thank the Examiner for the courtesy of an interview extended to Applicants' representatives on March 29, 2006. During the interview, differences between the present invention and the applied art, and the rejections noted in the outstanding Office Action were discussed. The Examiner tentatively agreed that the outstanding Office Action has not established a *prima facie* case of obviousness. Arguments presented during the interview are reiterated below.

Applicants respectfully traverse the outstanding grounds of rejection because the outstanding Office Action fails to provide a *prima facie* case of obviousness by asserting prior art that, no matter how the prior art references are combined, does not teach every element of independent Claims 1, 14, 21, and 25.

To establish a *prima facie* case of obviousness, M.P.E.P. §2143 requires that three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the references teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim elements. The outstanding Office Action is deficient with respect to the first and third requirements.

An exemplary embodiment of the claimed invention performs a real-time diagnosis of audio visual data as it is transmitted from a first video endpoint to a second video endpoint during a video teleconference. This embodiment of the claimed invention receives the audio visual data as it is being transferred from a first video endpoint to a second video endpoint, and accesses the audio visual data to a predetermined level needed for diagnosis of the performance of a video device located between the two video endpoints.

Claim 1 recites, *inter alia*, "a diagnostic tool operable to access audio-visual data as said audio visual data travels over said video network; and a diagnostic engine interfaced with the diagnostic tool and operable to determine performance statistics by analysis of the audio visual data accessed with the diagnostic tool."

The primary reference Pugaczewski describes a system that tests whether a component is in compliance with an appropriate protocol standard.[1] For example, test system 10 can be configured to test SNMP-based agent software in system under test 16a. Test

[1] Pugaczewski, col. 2, lines 50-56.

system 10 provides a stimulus to system 16a. Response 30 from system 16a is monitored, and if the response is appropriate for the stimulus, then system 16a is in compliance with the appropriate protocol standard.[2] Pugaczewski only discloses that consumer premises equipment (CPE) can be tested for protocol compliance. Pugaczewski never discloses what a CPE is.

The outstanding Office Action relies on Carolan's disclosure that a CPE can be "...any other type of device capable of accessing information through a packet-switched data network." However, Carolan does not disclose or suggest accessing ***audio visual data*** as the audio visual data travels over the video network and analyzing the audio visual data and analyzing the visual data.

Just because a CPE can be any device capable of accessing information through a packet switched network, does not disclose or suggest that audio visual data is accessed as the audio visual data travels over the video network and is analyzed. Pugaczewski only discloses testing for standard protocol compliance. If a CPE device as described in Carolan were used in the test system of Pugaczewski, the test system would still only test for standard protocol compliance. Even if the CPE device being tested was an audio visual device, Pugaczewski only discloses testing for standard protocol compliance. Pugaczewski only discloses providing a stimulus and receiving a response. There is no disclosure that either the stimulus or response is audio visual data. Thus, the cited references do not disclose or suggest accessing ***audio visual data*** as the audio visual data travels over the video network and analyzing the audio visual data and analyzing the visual data.

Furthermore, the outstanding Office Action has not established a motivation to modify Pugaczewski to analyze audio visual data. The outstanding Office Action merely states "it therefore would have been obvious to carry out the testing by Pugaczewski of A/V

[2] Pugaczewski, col. 3, line 54 to col. 4, line 8.

data of this CPE being any suitable A/V device."[3] The outstanding Office Action provides no support for this conclusion. It is erroneous and arbitrary conduct for the PTO to attempt to resolve questions material to patentability by reliance upon "subjective belief and unknown authority" (see In re Lee at 61 USPQ2d 1434) as is being done here. Also note the Kotzab court admonition (at 55 USPQ2d 1317) that "[b]road conclusory statements are not evidence."

Thus, in view of the above-noted distinctions, Applicants respectfully submit that Claim 1 (and its dependent Claims 2-13, and 32) patentably distinguish over Pugaczewski in view of Carol. Amended Claims 14, 21, and 26 are similar to Claim 1. Applicants respectfully submit that Claims 14, 21, and 26 (and Claims 15-20, 22-25, and 27-31) patentably distinguish over Pugaczewski in view of Carol for at least the reasons given for Claim 1.

Furthermore, Applicants note that the other cited references do not cure the above-noted deficiencies. Bahadiroglu was only cited to disclose correcting jitter and latency. Wei was only cited to disclose the use of a packet sniffer. Thompson was only cited to disclose identifying and compensating for lip synch problems. Farra was only cited to disclose that a CPE could be a teleconferencing device. None of these references cure the above-noted deficiencies.

Finally, Applicants respectfully traverse those grounds for rejection relying of Official Notice (see Office Action, page 3, when rejecting Claims 21, 26, and 29). Applicants do not consider the features for which Official Notice were taken to be "of such notorious character that official notice can be taken." Therefore Applicants traverse this assertion. "The examiner should cite a reference in support of his or her position."[4]

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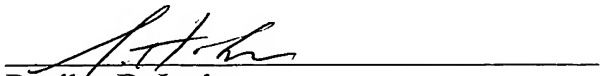
[3] Office Action, page 3.

[4] MPEP 2144.03, page 2100-129, left column, second full paragraph of MPEP 2144.03.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073
Joseph Wrkich
Registration No. 53,796

Scott A. McKeown
Registration No. 42,866

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

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